IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE ATM FEE ANTITRUST LITIGATION,

_______________________________________/

No. C 04-2676 CRB

ORDER

On May 14, 2010, the Court will hear argument on Defendants' Motions to Dismiss. In addition to the issues raised in those motions, the parties should be prepared to discuss the following questions:

1. Assume that Bank A is a member of the Star Network and Bank B is not. If one of Bank B's customers uses his ATM card at one of Bank A's ATMs, can that transaction be routed over the Star Network? In other words, do both banks have to be members of the Star Network in order for a transaction to be routed over that network?

2. Are banks typically members of more than one ATM Network?

3. If the answer to question two is YES, assume that Bank A and Bank B are both members of the Star Network and a second ATM network, such as the Plus ATM Network. If a Bank A customer uses her ATM card at a Bank B ATM, what factors determine which of the two networks the transaction will be routed over? For example, does Bank B get to choose? Do certain networks get priority by agreement?

4. Plaintiffs allege that there are twenty-five competitors in the ATM Networks market and that all twenty-five require member banks to pay an Interchange Fee. TAC ¶ ¶ 69, 88. Are the Interchange Fees established by some of these competitors lower than the fee that Star has adopted?

5. Do the parties agree with the following: Interchange fees are paid by one bank to another. Among the banks, interchange fees are therefore a zero sum game: every dollar spent in Interchange Fees by one bank is a dollar received by a second bank. As a result, in order for one bank to receive a net benefit from Interchange Fees, at least one other bank must incur a net loss.

6. If the parties agree with the analysis set forth in question five and the answer to question four is YES (*i.e.*, some networks charge lower Interchange Fees), why would banks that incur a "net loss" from Interchange Fees choose the Star Network rather than one of its lower-priced competitors? In other words, why wouldn't a bank that is net loser minimize its losses by choosing a lower-priced competitor?

IT IS SO ORDERED.

Dated: May 12, 2010

CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE